

REVISED SUMMARY REPORT
February 2004

To: The Federal Energy Regulatory Commission and All Members of the Plenary Group

Project: California Department of Water Resources' (DWR) Relicensing of the State Water Project's Oroville Facilities — Federal Energy Regulatory Commission (FERC) Project 2100

Subject: Notification to Plenary Group of Porgans & Associates Decision to Suspend Participation in the Alternative Licensing Procedure (ALP) and of Our Intent to Inform FERC and the Public of the ALP's Inherent Shortcomings, which are Diametric To Meaningful Public Input, Government's Trust Responsibilities and the California Department of Water Resources' (DWR) Written Assurances

1 **Notification:** Porgans & Associates (P&A),
2 Inc., is compelled to formally notify the
3 Plenary Group and the Federal Energy
4 Regulatory Commission (FERC) of our intent
5 to suspend participation in the Plenary Group
6 due to the inherent shortcomings of the ALP
7 that are diametric to meaningful public input
8 and government's trust responsibilities. In
9 good conscience we cannot be a party to a
10 process that for all intent and purpose is
11 perfunctory, disingenuous and in conflict
12 with the public's interest and DWR's written
13 assurances to the Plenary Group. On
14 numerous occasions, P&A and other
15 participants requested DWR to address
16 longstanding concerns and issues regarding
17 the inherent shortcomings of the ALP; i.e.,
18 who and what constitutes consensus (who
19 should be involved in consensus decisions), collaborative/cooperation, trust, transparency, cumulative impacts
20 study plan, DWR's failure to adhere to written assurances, and its evasive and combative tactics that lack a
21 collaborative spirit. To DWR's credit, it did attempt to address some of the issues; however, it failed to reconcile
22 the majority of the critical issues and concerns raised consistently over a three-year period.¹

DWR's Actions in Conflict with Assurances to Plenary: The tactics employed by DWR's management-level personnel were inconsistent with the assurances that they agreed to from the onset of the process; i.e., cooperation/collaboration, trust, consensus, transparency, and above all DWR's written assurances that the Plenary Group was to *serve as the forum in which to ultimately decide the terms of the settlement agreement*. Conversely, the records will attest to the fact that in matters of critical importance to the local participants and several federal agencies, **DWR was less than cooperative, recalcitrant, and in some instances non responsive**. Furthermore, as was pointed out by an objective observer (a skilled facilitator familiar with FERC relicensing procedures), who inform P&A and others, that the department's demeanor at the Plenary meetings which he had attended was **combative and not collaborative**.

Porgans & Associates' communication to Plenary Group, Project: Department of Water Resources Oroville Facilities Relicensing — Plenary Meeting, Subject: P&A's *Perspective, Concerns and Suggestions Regarding the ALP*, **May 1, 2001**.

P&A's written communication to All Members of the Plenary Group, Project: California Department of Water Resources Relicensing of the SWP's Oroville Facilities, Subject: *Issues of Concern and in Need of Clarification and Interpretation*, Preliminary Draft, **Oct. 22, 2002**.

P&A's written communication to Patti Kroen (Facilitator) and All Members of the Plenary Group, Project: California Department of Water Resources Relicensing of the SWP's Oroville Facilities, Subject: *Issues of Concern and in Need of Clarification and Interpretation at the Plenary Level*, Final, **Jan. 17, 2003**.

P&A's Meeting with DWR Officials, Resources Building, 1416 Ninth Street, Rm. 1603, Sacramento, California, Subject: Oroville Facilities Relicensing: Plenary Action Item Meeting Agenda (Off-Line Discussion), **Sept. 12, 2003**.

P&A's Fax Communication to Mary Nichols, Secretary of Resources and Mike Spears, Interim Director, California DWR, RE: *Department's Solicitation for Solutions to an Apparent Breakdown in Its FERC Alternative Relicensing Process for the Oroville Facilities: Resolution of Impasse Concerning Fairness, Trust and Confidence*, **Oct. 15, 2003**.

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DWR Host Plenary Kick-Off

The Department of Water Resources hosted the kick-off Plenary Group meeting on November 16, 2000 in Oroville. The intent of the kick-off meeting was to set up the organization, structure, and method by which the Plenary Group will work with DWR in the Oroville Facilities relicensing process using the Federal Energy Regulatory Commission's Alternative Licensing Procedure (ALP). DWR will engage a collaborative process to consult with Federal and State resource agencies, Indian Tribes, local governments, non-government organizations (NGOs), and other interested parties.²

Overview of ALP as a Relatively New Procedure

It is important to note, that when DWR initiated its relicensing effort in June 2000, the ALP was a relatively new procedure that had not been tried or tested; therefore, its relative degree of effectiveness would only be revealed via application and experience; nevertheless, as a good-faith gesture, P&A sent a letter of support for DWR's request to FERC.³ Suffice it to say, as is the case with newly adopted procedures, it is important to acknowledge that it is a dynamic process, which contains a "learn as you go" variable component and necessitated an adaptive and flexible attitude of ALP participants. Notwithstanding, the precepts upon which the ALP are predicated; i.e., cooperation, collaboration, consensus, transparency, trust and disclosure and/or written assurances. should be consistent and reflective in and throughout the procedure.

There is no question that the ALP does provide the opportunity for greater public participation, and, in a sense, DWR is to be commended for the countless numbers of meetings it has held; however, the resounding concerns raised by many of the ALP participants was that DWR was not genuinely responding to fundamental concerns raised by the public throughout the initial three years of the process. Many participants repeatedly informed DWR that it was evident

that public involvement was essentially a perfunctory exercise. Furthermore, DWR and its water contractors' actions throughout the process were primarily non-collaborative, disingenuous, combative, divisive, condescending and evasive.

Support for the ALP Premised on Consensus-Based Collaborative Participation, Transparency, Full Disclosure of Impacts and/or Actions, Trust, and, Most Important, Plenary Groups' Authority to Decide Terms of Settlement Agreement:

It was made clear from the onset of the ALP that the Plenary Group would have the authority to decide the terms of the settlement agreement. This authority of the Plenary Group is affirmed on page 7 of DWR's Initial Information Package, which clearly states: "*The Plenary Group will serve as the forum in which to ultimately decide the terms of the settlement agreement.*"

Roles in Negotiation - Plenary

- *Establish policy/settlement protocols*
- *Prepare for negotiations based on policy*
- *Negotiate PM&E package*
- *Consider/resolve across resource impacts*
- *Plenary Group Approves settlement⁴*

P&A's Fax Communication to Mary Nichols, Secretary of Resources and Mike Spears, Interim Director, California DWR, RE: *Department's Solicitation for Solutions to an Apparent Breakdown in Its FERC Alternative Relicensing Process for the Oroville Facilities: Resolution of Impasse Concerning Fairness, Trust and Confidence, Oct. 15, 2003.*

² DWR's *Draft Summary of Plenary Group Meeting*, Oroville Facilities Relicensing (FERC Project No. 2100), Nov. 16, 2000, p. 1.

³ P&A's written communication to David P. Boegers, Secretary, Federal Energy Commission (Certified Mail), Re: P&A's Response to the California Department of Water Resources' Request to Use Alternative Procedures in Preparing a License Application to the Federal Energy Commission, Dec. 22, 2000.

⁴ DWR's Summary of the Plenary Group Meeting, Oroville Facilities Relicensing (FERC Project No. 2100) Oct. 22, 2002 – http://oroville.relicensing.water.ca.gov/pdf_doc/22Oct02_plenary_att12.pdf.

Moving Target Tactics and False Assurances

Mid-way through the ALP, the members of the Plenary learned that DWR had the final say as to what it would or would not agree to do throughout the process, and thereon, told participants that they should not be overly concerned about the process, rather the focus should be on the ultimate settlement. Needless to say, these and other issues raised fundamental concerns among many of the participants, which was negated to a limited degree by the fact that DWR assured the members of the Plenary Group that they would ultimately decide the terms of the settlement agreement.

In addition, the established protocols provided some relief if members of the Plenary Group came to an impasse and/or breakdown, they could ultimately call on FERC's dispute resolution designee to assist in resolving the conflict. As stated later in this letter, DWR refused to enter into the alternative dispute resolution, and successfully influenced a fundamental change in the Process Protocols that usurped the Plenary's authority to decide the ultimate terms of the settlement agreement. Because of the myriad of tactical and inherent shortcomings evidenced in the process, in the interest of time, P&A will only provide a synopsis of the issues and shortcomings, and suggest that all of the detailed information is supported by the record — providing DWR maintained an accurate and unbiased record.

DWR's Moving Target Tactic to Circumvent Consensus and to Usurp Plenary Group's Authority

For nearly two-and-one half years, a number of the ALP participants (designated tribal members, P&A, private and public members from the local community) repeatedly asked the responsible department officials, to define consensus and, more importantly, to identify who in the APL was actually to be involved in determining consensus. In the Spring of 2003, DWR finally defined who is allowed to be involved in consensus within the Plenary Group. As stated in the Process Protocols, consensus is determined by "negative polling." During that time period, when consensus was requested by the ALP members, with few exceptions, it always was "weighted" in favor of DWR and its State Water Project (SWP) contractors and their

What's in a Settlement Agreement?

"There is no regulatory requirements for Settlement Agreement Structure, however 18 C.F.R. 385.602 (Rule 602) states that Settlement Agreements 'must be fair, reasonable and in the public interest'"

[Source: DWR's Plenary Group Meeting Summary, Oct. 22, 2002 - http://oroville.relicensing.water.ca.gov/pdf_doc/22Oct02_plenary_a]

respective consultants, because they had the largest number of people present in the room. P&A, the tribes and the local participants finally prevailed in establishing the fact that DWR, as an ALP participant, had only person that could weight-in during a call for consensus, which also applied to others that had multiple consultant present during consensus.⁵ This determination finally provided, what appeared to be a level-playing field that enabled substantive input by the tribes and other local participants. Albeit, shortly thereafter, when consensus did not favor the actions or directives of DWR and its water contractors, they initiated action that successfully usurped all meaningful authority/decision making from the Plenary Group; i.e., for example the Plenary Group no longer "approves" settlement agreement(s) or Negotiates PM&E (Resource Actions) package. P&A, and others, raised their respective concerns and opposition to the changes in the revised Process Protocols, as being in conflict with the originally stated purposes and authority of the Plenary, and such actions were inconsistent with the public interest.

ALP Collaborative Process: The following are statements published by DWR pertinent to cooperation, collaboration, trust and confidence.

The relicensing process proposed is based on cooperation and collaboration with federal and state resources agencies, Indian Tribes, local governments, non-government organizations (NGOs), and interested

⁵DWR's Oroville Facilities Relicensing Program, Plenary Group Meeting Summary - Draft - Feb. 25, 2003.

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members of the public. This process is referred to as the *Alternative Relicensing Procedures (ALP)*, as described in more detail in Section 1.7 of this IIP [*Initial Information Package*].⁶ [emphasis added.]

DWR plans to use the ALP to prepare its license application, DWR will engage a collaborative process to consult with federal and state governments, Indian Tribes, local organizations, non-governmental organizations, and other interested parties. DWR believes that the ALP offers the best opportunity to obtain input and feedback from a broad array of interests in an atmosphere of cooperation and trust. The ALP alternative under consideration by DWR is the APEA process.⁷ [emphasis added.]

The issues of cooperation/consensus, trust, confidence, disclosure and DWR's failure to address ALP participants' concerns relative to cumulative impacts, which were of concern from the onset of the process and during the ensuing three-year period, came to a crescendo at the September 2003 Plenary meeting wherein consensus could not be reached to take an action to remedy the impasse. At that meeting, it became evident that the process had reached a breakdown (*Process Protocols*, 4.5.3, Identifying Collaborative Process Breakdown, p. 20) as defined by the Process Protocols. [Please Refer to September 2003 Plenary Meeting Summary.]

DWR Declined to Participate in Alternative Dispute Resolution: Subsequent to that meeting, and in accordance with the Process Protocols [4.4.3. Dispute Resolution], P&A in conjunction with other ALP participants requested the assistance of FERC's Dispute Resolution Services⁸ director to arrange a meeting with DWR and the participants to resolve these and other issues that were at an impasse.⁹ To FERC's credit, Richard Miles, Director, Dispute Resolution Services, assured P&A and others that he would discuss the matter with DWR personnel and report back to us. Several months elapsed before Mr. Miles reported to us that DWR management personnel had finally informed him that they were not prepared to enter into the alternative dispute resolution. Mr. Miles also stated that it was not mandatory for DWR to participate in such a meeting. Mr. Miles asked DWR to send a letter stating the reasons for its decision, which he would provide to P&A et al; however, as of the date of this correspondence, Mr. Miles stated he had not received such a letter.¹⁰ Here again, DWR's lack of meaningful cooperation/collaboration and its decision not to use all of the available tools to resolve the impasse was inconsistent with its stated intentions and the provisions contained in the Process Protocols. P&A requested written confirmation from Mr. Miles as to his discussion with DWR officials and P&A. Mr. Miles declined to provide a written response. P&A informed Mr. Miles that we would send him a letter/fax reiterating his comments, and requested that he review it, and if the contents of the fax/letter are consistent with what was discussed, then, P&A would respectfully request that he sign and date it and fax us back a copy. The fax was sent on Jan. 15, 2004, and we are still awaiting Mr. Miles' response.¹¹

⁶ California Department of Water Resources, *Initial Information Package, Relicensing of the Oroville Facilities, Federal Regulatory Commission License Project No. 2100*, Jan. 2001, p. 1.

⁷ *Ibid.*, pp. 2 and 3.

⁸ FERC, Dispute Resolution Service, *Introduction to Alternative Dispute Resolution*, Mar. 18, 2003.

⁹ P&A's fax communication to Richard Miles, FERC, Dispute Resolution Services, Re: FERC License 2100 — Transmission of DWR's Response to List of Issues in Need of Resolution/Solution [Includes Porgans & Associates' (P&A) Recent Submittal], **Oct. 10, 2003**.

¹⁰ Richard Miles telephone message of **Jan. 9, 2004**, which he left on P&A's Answering Service.

¹¹ P&A's fax communication to Richard Miles, FERC, P&A's fax communication to Richard Miles, Director, FERC, Dispute Resolution Services, Re: Confirmation of Issues Discussed During Our Telephone Conversation of Jan. 12, 2004, FERC Project No. 2100 — Porgans & Associates' (P&A) Request for FERC's Assistance in Alternative Dispute Resolution with California Department of Water Resources, **Jan. 15, 2004**.

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**Confidentiality Is Not A FERC Mandate, Rule
or Statutory Requirement in the ALP**

Over a period of several months, P&A raised concerns and opposition to the "confidentially" proviso that was fiercely debated during the amendment to the Process Protocols. We discussed the issue of whether or not "confidentially" in the Alternative Licensing Procedure (ALP) was a FERC

requirement -- by a rule or by some regulatory statute. During that period P&A had been in contact with Richard Miles and Jim Fargo and other FERC staff, to ascertain information that supports the contention that FERC requires participants in the ALP to adhere to confidential provisions. Based on those discussions, both Mr. Miles and Mr. Fargo stated that to their knowledge there is no requirement in FERC's ALP procedures that requires the parties to keep their discussions confidential. Mr. Miles said that the issue of confidentiality is a matter that the participants establish on their own volition when negotiations occur.¹²

Although, P&A does not subscribe or sanction the use of confidentiality as a tool in negotiating settlements, it acknowledges that in matter of litigation, confidentiality is a tactic that is employed, even if it is at the expense of unsuspecting victims; i.e., child abuse, government fraud, banking scams, etc. P&A strongly objects to its use in the ALP because, with the exception of J.E.M. Farms, all of the other participants are public entities, including the SWP contractors. Additionally, the Oroville facilities are publicly owned, the water belongs to the people as does the fish and wildlife and related trust resources, the money is from public sources, and the government has a trust responsibility to promote and protect the public. Therefore, the issue of confidentiality in this type of a setting is disingenuous and diametric to the public interest. P&A informed the Plenary Group at the December 2003 meeting that it had requested its client to hire another person for that phase of the project, because P&A has no intention of supporting or participating in such a shenanigan.

DWR's Circumvention of Producing a Cumulative Impacts Study Plan

Throughout the Process, P&A, NOAA Fisheries, the U.S. Fish & Wildlife Service, and Others, Have Repeatedly Confronted DWR Officials With Their Failure to Produce a Cumulative Impacts Study Plan:

Eric Theiss [NOAA Fisheries] asked whether DWR intends to produce a cumulative effects study plan. Rick Ramirez [DWR] suggested that the question be deferred until after the meeting with NOAA.¹³

Patrick Porgans reminded the Plenary Group that he continues to have issue with the process for cumulative impact analysis and stated that NOAA is considering dropping out of the process over the issue. Eric Theiss, representing NOAA, confirmed the potential for the cumulative impacts issue to trigger their withdrawal from the collaborative process and added that he has other issues with the process. The Plenary Group discuss the potential for issues that are unresolved within the collaborative moving to the alternative dispute resolution process that is included in the existing Process Protocols and Mike Meinz asked for clarification on who would go to dispute: NOAA and DWR or NOAA and the ALP. He added that DFG does not agree with NOAA on the cumulative impact issue. Rick Ramirez asked Eric Theiss to clarify NOAA's position with regard to the ALP. Eric replied that NOAA has some concerns sympathetic to the local stakeholders but probably would not withdraw due to those concerns alone. The cumulative impact issue is what would trigger NOAA to withdraw from the process.¹⁴ [Emphasis Added.]

¹² *Ibid.*, P&A's fax communication to Richard Miles, FERC, Jan. 15, 2004.

¹³ Department of Water Resources — *Oroville Facilities Relicensing Program, Oct. 28, 2003 Plenary Group Meeting Draft Summary*, P. 7.

¹⁴ Information sent by DWR's Sue Larson to P&A, Jan. 13, 2004. Oroville Facilities Relicensing, FERC Project No. 2100, *Draft Summary of the Plenary Group Meeting*, Sept. 23, 2000, p. 5.

NOAA Fisheries Calls DWR for Its Failure to Provide Cumulative Impact Study Plan, It Assured to ALP:

To date, DWR has presented study plans for consideration by NOAA Fisheries and the collaborative intended to address direct impact only, while omitting impacts that DWR deems indirect or cumulative. DWR's distinction between types of impacts and the separation of study plans appears arbitrary and inconsistent with FERC regulations. Regardless, DWR confirmed that it would introduce a separate study plan addressing cumulative impacts (see Action Item #E39 from the September 26, 2001 Environmental Working Group Meeting,³ as well as the 'Draft Guidance' dated 6/21/02, page 3, Step 1). However, on May 14, 2003, after approval of the initial study plans (SP-F1 through SP-F21), DWR announced its intention not to produce a cumulative impact study plan. This change has significant ramifications which hinder our ability to fulfill our trust resource obligations. During this relicensing process, at least 18 months have elapsed from the time at which the cumulative impacts study was assured until the present time. Our concern is that the Preliminary Draft Environmental Assessment will be inadequate, and there will be an insufficient amount of time to address our requirements. [Emphasis Added.]

NOAA Fisheries and other ALP participants have participated in good faith in this collaborative relicensing process, however we believe that the process outlined by Scoping Document 2 and the Draft Guidance document is inadequate for developing an administrative record which satisfies the provisions of the ESA, NEPA, EFH and the FPA. Scoping Document 2 does not define the scope of the analysis, therefore, the intent of this document is not satisfied. Instead, it refers to a document in draft which does not provide time lines or phasing triggers for its proposed progressive analysis, which may have otherwise satisfied our requirements.¹⁵

P&A also shared NOAA Fisheries concerns regarding DWR's Cumulative Impacts Guidance Assessment Document, which it outlined in its Dec. 5, 2002 letter to Rick Ramirez, it states:

Page 1, para 2: " NOAA Fisheries reviewed DWR's Guidance Document and found the DWR's purpose and intent in advancing an alternative scoping document unclear. The DWR's document defines and restricts what information the Services will need to administer their prescriptive and consultive authorities."

Page 2, para 1: "Regarding cumulative impact assessment, the DWR's Guidance Document incorrectly combines NEPA, ESA, and CEQA definitions of cumulative impacts."

Page 2, para 3: Regarding the geographic scope of impacts, the DWR's Guidance Document arbitrarily designates the limits of impacts to listed species (action area) without technical or scientific basis. In doing so, DWR attempts to predestine the outcome of studies. This implies limits on the depth and thoroughness of the analyses, making a scientific assessment of the impacts impractical.

Page 2, para 4. Our concern is that DWR develop an adequate administrative record upon which to base our prescriptions and recommendations within statutory filing deadlines.

In essence, neither P&A nor NOAA Fisheries would sign off on the Cumulative Impact Assessment Document. As of the December 2003 Plenary Group meeting, those and other fundamental issues have not been resolved to the satisfaction of the concerned participants.

¹⁵ National Marine Fisheries Services comments on Scoping Document 2 for the Oroville facilities relicensing under P-2100, sent to Kim Koto, California Department of Water Resources and Magalie Salas, Secretary, Federal Energy Regulatory Commission, May 28, 2003; at <http://feris.ferc.gov/idmws/search/results> [submittal No. 20030603-0119]

DWR's Inherent Conflict of Interest:

DWR has a conflicting role as a public trustee and a water purveyor. DWR receives about 85% of its annual funding from SWP contractors via water and power revenues (\$6.75 billion from energy). Conversely, its stated mission is: "To manage the water resources of California in cooperation with other agencies, to benefit the State's people, and to protect, restore, and enhance the natural and human environments." Source: <http://wwwdwr.water.ca.gov>

DWR's Past Practices and Major Water Project Proposals Failed Under the Weight of Public Scrutiny

Despite the massive expenditure of hundreds-of-millions of dollars, since the 1970's, every major water project and/or related proposal that DWR has promoted failed under the weight of public scrutiny and/or legitimate opposition; i.e., the Glenn Complex, Los Banos Grande Reservoir, Peripheral Canal and its Supplemental Water Supply Program proposal (exportation of up to 400,000 acre-feet of water from northern California). P&A was involved in each of those efforts, representing clients and/or conducting *pro bono* work in the public interest. In each of those projects, P&A used all possible means to assist and/or compel DWR to fully comply with disclosure and environmental requirements. In the case of the Oroville relicensing project, DWR knows that it will not be denied a new license, no matter what the circumstances; therefore, it and the SWP contractors are in a "win-win" situation.

DWR's Primary Objective in ALP Relicensing is to Limit Mitigation Costs to Project Contractors

DWR and its SWP contractors primary objective is to limit the amount of funds they will have to expend to mitigate for those project impacts (FERC related) associated with the relicensing project, while the project beneficiaries (water and power users) are the major recipients of hundreds of billions of dollars annually. According to a report that the SWP contractors provided to the California State Legislature in 1994: "*Economically, the M&I (municipal and industrial) Contractors provide water supplies for the vast majority of the California economy. The SWP service area generates more than 400 billion dollars in production annually and provides more than 9 million jobs for Californians.*" (Please refer to Figure 1.)¹⁶ Between 1969 and 1991, the agricultural area serviced by the SWP, in the San Joaquin Valley, generated over \$6.65 billion in gross revenues.¹⁷ This area was historically dry farmed.

Neither DWR Nor SWP Contractors Paid for Recreation, Fish and Wildlife Cost for the Project

Since the approval of the SWP in 1959, more than \$250,000,000 had been spent on recreation, and fish and wildlife enhancement. Those expenditures were not paid for by the SWP contractors, because they are classified as a non-reimbursable cost - they were paid for by the taxpayers. [Source: DWR Bulletin 132 series.]¹⁸ Furthermore, although DWR uses the Feather River as the conduit to move water from Oroville to its contractors south of the Sacramento-San Joaquin Delta, they do not pay one penny for the maintenance of the channel or damages sustained by private property owners downstream from the Oroville facilities¹⁹ and/or the related loss of revenues to the county.

¹⁶State Water Project Urban Contractors, Briefing, State Senate Agricultural and Water Resources Committee Hearing, Aug. 1, 1994.

¹⁷ Department of Water Resources' Bull. 132 series, Management of the California State Water Project-Appendix F - San Joaquin Valley Post-Project Impacts, 1969 through 1992.

¹⁸ Department of Water Resources' Bull. 132 series, Management of the California State Water Project-Appendix D, Cost of Recreation and Fish and Wildlife Enhancement, Annual Report.

¹⁹Letter to Patrick Porgans, Red Tape Abatement, Ltd., from the California Department of Water Resources, RE: Flood Maintenance Responsibility, July 27, 1984..

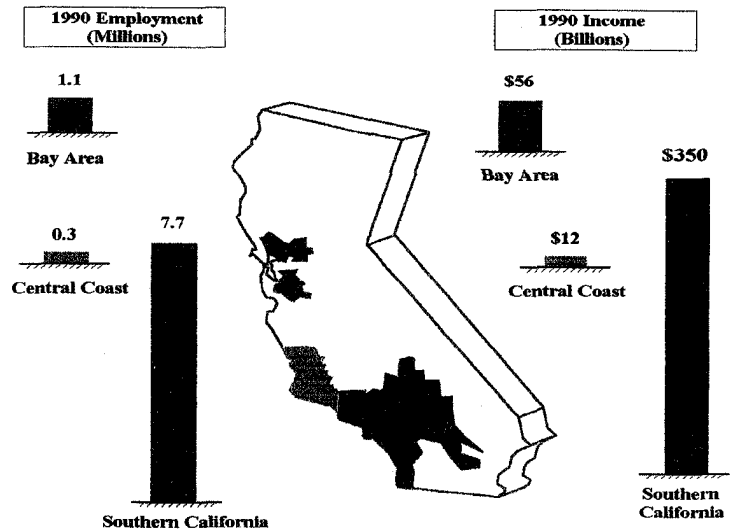
Closing Statement

Contrary to DWR's written statement, in the IIP, it does not

Figure 1

**Income & Employment
Urban State Water Contractors**

Economically, the M&I Contractors provide water supplies to the vast majority of the California economy. The SWP service area generates more than 400 billion dollars in production annually and provides more than 9 million jobs for Californians.



Based on data from DOF California Statistical Abstract 1992.

In fact, 13 members of the California State Legislature, jointly co-authored a letter to the SWRCB stating their objections to the Board's decision not to hold DWR accountable for the violations.²² P&A also filed a lawsuit against DWR and the Interior Department to stop the illegal water exports attributable to the permit violations (*Porgans, et al, v. Babbitt, et al.*) Although the SWP contractors have stated at the Plenary meeting that they have water rights to SWP water — that is simply not true. In fact, all they have is a contract to obtain water from the SWP. It is also important to note, that although SWP contractors are required to pay certain costs for the water they receive from the Project, there is **NO charge for the water itself — it is FREE.**

Even under the conditions of its existing FERC license (Project 2100) , the local citizens have had to take action through FERC to require DWR to comply with the terms and conditions of the license, and there are no assurances that DWR will voluntarily comply with the terms and conditions of a new license. In the final analysis, ALP participants will be at the mercy of DWR and its water contractors and some highly paid and skilled advocates, all of whom are using revenues derived from the public's water and energy resources to promote their interests. Albeit, it is difficult to say what the outcome of the settlement agreement will contain; however, if their past actions are any indication, then, one can surmise what to expect when the dust finally settles.

²⁰ State Water Resources Control Board, Public Meeting, Consideration of Compliance with Water Right Requirements for the Sacramento-San Joaquin Delta and Suisun Marsh, Staff Exhibit 19: Summary of Recent Decision 1485 Violations, Nov. 20, 1992.

²¹ State Water Resources Control Board, Public Meeting, Consideration of Compliance with Water Right Requirements for the Sacramento-San Joaquin Delta and Suisun Marsh, Staff Exhibit 20: Enforcement Options [D-1485 Violations], Nov. 20, 1992.

²² Senator Milton Marks', et al, letter to State Water Resources Control Board Chairman John Caffrey, July 12, 1993.